



Amendment No. 3
to
Interlocal Cooperation Agreement
MA 9100 - NI190000011
between
UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON
and the
CITY OF AUSTIN
(Fresh for Less Evaluation)

This Third Amendment to the Interlocal Cooperation Agreement (Agreement) is entered into by and between the City of Austin (City), a Texas home-rule municipal corporation, and University of Texas Health Science Center at Houston ("UTHEALTH"), a state institute of higher education organized under the laws of the State of Texas and a member of The University of Texas System ("System"), together the "Parties," and each individually, a "Party."

The City and the UTHEALTH hereby agree to the Agreement revisions listed below.

- 1.0** The total amount for this Third Amendment to the Agreement is *Thirty Five Thousand dollars (\$35,000)*. The total Agreement amount is recapped below:

Term	Agreement Change Amount	Total Agreement Amount
Basic Term: (January. 1, 2019 – December 31, 2019)	n/a	\$ 45,000
Amendment No. 1: Replace Exhibit 1 with Exhibit A.1	n/a	\$45,000
Amendment No. 2: Exercise Extension Option #1 (January. 1, 2020 – December 31, 2020)	\$ 35,000	\$80,000
Amendment No. 3: Exercise Extension Option #2 (January 1, 2021—December 31, 2021)	\$35,000	\$115,000

- 2.0** The Agreement is hereby amended by making the following changes to the original Agreement EXHIBITS:

Exhibit A.2 -- Program Work Statement is deleted in its entirety and replaced with a new
Exhibit A.3 -- Program Work Statement.

- 3.0** The Agreement is hereby amended by deleting the specified terms and conditions in its entirety and replacing it with the following:

A. Section A.

Term. The term of this Agreement shall be from January 1st, 2021 through December 31st, 2021 unless a Party elects to terminate the Agreement in accordance with Section J. Termination and Dispute Resolution. There are two remaining 12-month renewal options each in an amount up to \$45,000, pending identified program needs and budgets in future Fiscal Years.

B. Section B.

Services. UTHEALTH will provide a qualitative and quantitative evaluation of the Fresh for less Projects. Performance measures, including the deliverables and activities, are presented in Exhibit A.3.

C. Section C.

Financial Terms

1. City shall pay UTHEALTH for services rendered under this Agreement in an amount not to exceed Thirty Five Thousand and No/100 Dollars (\$35,000).
2. The payment schedule for reimbursement is set forth in Exhibit A.3.
3. UTHEALTH shall submit payment requests to the City's Contract Manager for review and approval within 15 calendar days following each deliverable deadline identified in Exhibit A.2. City shall pay UTHEALTH within 30 days of receipt of a complete and accurate Invoice. Each Invoice shall include copies of any and all materials deemed by the City, in its reasonable discretion, to support and verify the invoice

4.0 MBE/WBE goals were not established for this Agreement.

5.0 Based on the criteria in the City's Living Wage Resolution #020509-91, the Living Wage requirement does not apply to this Agreement.

6.0 By signing this Third Amendment, the Grantee certifies that the Grantee and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusion records found at SAM.gov, the State of Texas, or the City of Austin.

7.0 All other Agreement terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Second Amendment is hereby incorporated into and made a part of the above-referenced Agreement.

**UNIVERSITY OF TEXAS HEALTH SCIENCE
CENTER AT HOUSTON**

Signature:



Digitally signed by Kathleen Kreidler
DN: postalCode=77030, ou=UTHEALTH HON TEX NOW, ou=The University of
Texas Health Science Center at Houston, serial=1288, email=Kathleen.Kreidler@uth.tmc.edu
Date: 2021.01.10 09:10:20 -0500

Kathleen Kreidler
Associate Vice President
Sponsored Projects Administration
7000 Fannin Street
Houston, TX 77030

Date: Jan 10, 2021

CITY OF AUSTIN

Signature:



Stephanie Hayden, Director
Austin Public Health
PO Box 1088
Austin, TX 78767

Date: 1/27/21

Exhibit A.3:

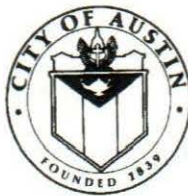
Work Statement and Deliverables

1. Overview

The purpose of this contract is for UT Health Science Center (UTHEALTH) to continue to provide evaluation services including qualitative and quantitative analyses of the Fresh for Less projects. UTHEALTH has provided these services for the past four years. These evaluations will be used for the purposes of APH planning, and assessment of overall program effectiveness towards APH's goals of increasing access to, and ultimately the purchase and consumption of healthy and affordable fruits, vegetables, and staple food items. Priority populations for these projects include individuals with greater risk factors for chronic disease, including low income individuals and individuals who are Hispanic/Latino and African American/Black, as well as individuals who live in geographic areas with less access to full-scale grocery stores and individuals who are eligible for and/or receive Supplemental Nutrition Assistance Program (SNAP).

2. Deliverables

EVALUATION OF HEALTHY FOOD RETAIL (HFR)			
Deliverable	Deadline	Supporting Documentation	Payment Amount
A. Refine sample size and timeline	4/15/2021	Sampling plan and timeline	\$1,500.00
B. Revise survey instruments for healthy food retail	7/15/2021	Copies of final summary instruments	\$1,500.00
C. Collect and Analyze data	11/15/2021	Draft evaluation report	\$15,000.00
D. Write and submit final evaluation report	12/15/2021	Final evaluation report	\$3,000.00
PILOT FOOD ACCESS PROJECT			
E. Create evaluation plan	3/15/2021	Evaluation Plan	\$1,500.00
F. Create survey materials for evaluation	5/15/2021	Survey Draft	\$1,500.00
G. Collect and Analyze data	8/15/2021	Confirmation of Data Entry	\$8,000.00
H. Submit evaluation report	12/15/2021	Final Report	\$3,000.00



Amendment No. 2
to
Interlocal Cooperation Agreement
MA 9100 - NI190000011
between
UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON
and the
CITY OF AUSTIN
(Fresh for Less Evaluation)

This Second Amendment to the Interlocal Cooperation Agreement (Agreement) is entered into by and between the City of Austin (City), a Texas home-rule municipal corporation, and University of Texas Health Science Center at Houston ("UTHEALTH"), a state institute of higher education organized under the laws of the State of Texas and a member of The University of Texas System ("System"), together the "Parties," and each individually, a "Party."

The City and the UTHEALTH hereby agree to the Agreement revisions listed below.

- 1.0** The total amount for this Second Amendment to the Agreement is **Thirty Five Thousand dollars (\$35,000)**. The total Agreement amount is recapped below:

Term	Agreement Change Amount	Total Agreement Amount
Basic Term: (January. 1, 2019 – December 31, 2019)	n/a	\$ 45,000
Amendment No. 1: Replace Exhibit 1 with Exhibit A.1	n/a	\$45,000
Amendment No. 2: Exercise Extension Option #1 (January. 1, 2020 – December 31, 2020)	\$ 35,000	\$80,000

- 2.0** The Agreement is hereby amended by making the following changes to the original Agreement EXHIBITS:

Exhibit A.1 -- Program Work Statement is deleted in its entirety and replaced with a new **Exhibit A.2 -- Program Work Statement**.

- 3.0** The Agreement is hereby amended by deleting the specified terms and conditons in its entirety and replacing it with the following:

A. Section A.

Term. The term of this Agreement shall be from January 1st, 2020 through December 31st, 2020 unless a Party elects to terminate the Agreement in accordance with Section

J. Termination and Dispute Resolution. There are three remaining 12-month renewal options each in an amount up to \$45,000, pending identified program needs and budgets in future Fiscal Years.

B. Section B.

Services. UTHEALTH will provide a qualitative and quantitative evaluation of the Fresh for less Projects. Performance measures, including the deliverables and activities, are presented in Exhibit A.2.

C. Section C.

Financial Terms

1. City shall pay UTHEALTH for services rendered under this Agreement in an amount not to exceed Thirty Five Thousand and No/100 Dollars (\$35,000).
2. The payment schedule for reimbursement is set forth in Exhibit A.2.
3. UTHEALTH shall submit payment requests to the City's Contract Manager for review and approval within 15 calendar days following each deliverable deadline identified in Exhibit A.2. City shall pay UTHEALTH within 30 days of receipt of a complete and accurate Invoice. Each Invoice shall include copies of any and all materials deemed by the City, in its reasonable discretion, to support and verify the invoice

4.0 MBE/WBE goals were not established for this Agreement.

5.0 Based on the criteria in the City's Living Wage Resolution #020509-91, the Living Wage requirement does not apply to this Agreement.

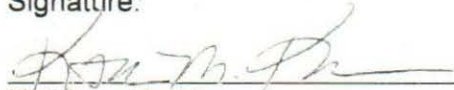
6.0 By signing this Second Amendment, the Grantee certifies that the Grantee and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusion records found at SAM.gov, the State of Texas, or the City of Austin.

7.0 All other Agreement terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Second Amendment is hereby incorporated into and made a part of the above-referenced Agreement.

**UNIVERSITY OF TEXAS HEALTH SCIENCE
CENTER AT HOUSTON**

Signature:

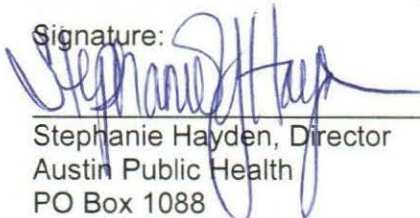


Kathleen Kreidler
Associate Vice President
Sponsored Projects Administration
7000 Fannin Street
Houston, TX 77030

Date: Jan 12, 2020

CITY OF AUSTIN

Signature:



Stephanie Hayden, Director
Austin Public Health
PO Box 1088
Austin, TX 78767

Date:

01/21/2020

Exhibit A.2:

Work Statement and Deliverables

1. Overview

The purpose of this contract is for UT Health Science Center (UTHEALTH) to continue to provide evaluation services including qualitative and quantitative analyses of the Fresh for Less projects. UTHEALTH has provided these services for the past three years. These evaluations will be used for the purposes of APH planning, and assessment of overall program effectiveness towards APH's goals of increasing access to, and ultimately the purchase and consumption of healthy and affordable fruits, vegetables, and staple food items. Priority populations for these projects include individuals with greater risk factors for chronic disease, including low income individuals and individuals who are Hispanic/Latino and African American/Black, as well as individuals who live in geographic areas with less access to full-scale grocery stores and individuals who are eligible for and/or receive Supplemental Nutrition Assistance Program (also known as SNAP).

2. Deliverables

EVALUATION OF HEALTHY FOOD RETAIL (HFR)			
Deliverable	Deadline	Supporting Documentation	Payment Amount
A. Refine sample size and timeline	1/30/20	Sampling plan and timeline	\$1,500.00
B. Revise survey instruments for healthy food retail	1/30/20	Copies of final summary instruments	\$1,500.00
C. Collect and Analyze data	5/31/20	Draft evaluation report	\$15,000.00
D. Write and submit final evaluation report.	6/31/20	Final evaluation report	\$3,000.00
PILOT FOOD ACCESS PROJECT			
E. Create evaluation plan	9/1/2020	Evaluation Plan	\$1,500.00
F. Create survey materials for evaluation	10/1/2020	Survey Draft	\$1,500.00
G. Collect and Analyze data	11/30/20	Confirmation of Data Entry	\$8,000.00
H. Submit evaluation report	12/31/20	Final Report	\$3,000.00



Amendment No. 1
to
Interlocal Cooperation Agreement
between
**UNIVERSITY OF TEXAS HEALTH SCIENCE
CENTER AT HOUSTON**
and the
CITY OF AUSTIN
(Fresh for Less Programs)

This First Amendment to the Interlocal Cooperation Agreement (Agreement) is entered into by and between the City of Austin (City), a Texas home-rule municipal corporation, and University of Texas Health Science Center at Houston ("UTHEALTH"), a state institute of higher education organized under the laws of the State of Texas and a member of The University of Texas System ("System"), together the "Parties," and each individually, a "Party."

The City and the UTHEALTH hereby agree to the Agreement revisions listed below.

1.0 The Agreement is hereby amended by making the following changes to the original Agreement EXHIBITS:

Exhibit A. -- Work Statement and Deliverables is deleted in its entirety and replaced with a new **Exhibit A.1 -- Work Statement and Deliverables**.

2.0 All other Agreement terms and conditions remain the same unless modified in an Amendment agreed to by both Parties.

3.0 This Agreement is effective as of the date of final signature ("Effective Date").

BY THE SIGNATURES affixed below, this First Amendment is hereby incorporated into and made a part of the above-referenced Agreement, and the undersigned individuals warrant that they have been duly authorized by their governing bodies in order to enter into and perform the terms of this First Amendment.

**UNIVERSITY OF TEXAS HEALTH SCIENCE
CENTER AT HOUSTON**

Signature:

Kathleen Kreidler
Associate Vice President
Sponsored Projects Administration
7000 Fannin Street
Houston, TX 77030

Date: December 10, 2019

CITY OF AUSTIN

Signature:

Stephanie Hayden
Director, Austin Public Health
City of Austin
PO Box 1088
Austin, TX 78767

Date: 12/16/19

Exhibit A.1:

Work Statement and Deliverables

1. Overview

The purpose of this contract is for UT Health Science Center (UTHEALTH) to continue to provide evaluation services including qualitative and quantitative analyses of the Fresh for Less projects. UTHEALTH has provided these services for the past 3 years. These evaluations will be used for the purposes of APH planning, and assessment of overall program effectiveness towards APH's goals of increasing access to and ultimately the purchase/consumption of healthy and affordable fruits, vegetables, and staple food items. Priority populations for these projects include individuals with greater risk factors for chronic disease (including low income individuals and individuals who are Hispanic/Latino and African American/Black), as well as individuals who live in geographic areas with less access to full-scale grocery stores and individuals who are eligible for and/or receive Supplemental Nutrition Assistance Program (SNAP).

The projects to be evaluated are the following:



- a. Healthy Food Retail
- b. Nutritious Food Incentive Program
- c. Mobile Food Pantries

2. Deliverables

EVALUATION OF HEALTHY FOOD RETAIL (HFR)			
Deliverable	Deadline	Supporting Documentation	Payment Amount
A. Refine sample size and timeline	First 3 months	Sampling plan and timeline	\$1,500.00
B. Revise survey instruments for healthy food retail	First 3 months	Copies of final summary instruments	\$1,500.00
C. Analyze farm stand & mobile market data	11/30/2019	Draft evaluation report	\$15,000.00
D. Write and submit final evaluation report.	12/15/19	Final evaluation report	\$3,000.00
NUTRITIOUS FOOD INCENTIVE PROGRAM (NFIP) EVALUATION and MOBILE PANTRIES			
E. Update and refine evaluation plan	11/15/2019	Evaluation Plan	\$1,500.00
F. Update materials for NFIP evaluation	11/15/2019	NFIP Survey Draft	\$1,500.00
G. Analyze data from Mobile Pantries	12/31/19	Confirmation of Data Entry	\$15,000.00
H. Submit Mobile Pantry evaluation report	12/31/19	Final Mobile Pantry Report	\$3,000.00
I. Corner Store report	12/31/19	Final Corner Store Report	\$3,000.00



MEMORANDUM

TO: Christopher Shorter, Assistant City Manager
THRU: Anne L. Morgan, City Attorney 
FROM: Allyson Evans, Assistant City Attorney 
DATE: March 12, 2019
RE: ILA with the University of Texas Health Science Center at Houston

Please find attached for your signature a copy of the above referenced Interlocal Agreement (ILA) with the University of Texas (UT) Health Science Center at Houston to provide evaluation services for the Fresh for Less Healthy Food Access Projects.

On January 31, 2019, Council approved the negotiation and execution of an ILA with UT Health Science Center in an amount not to exceed \$45,000, with four 12-month extension options, for a total contract amount not to exceed \$225,000. The ILA is approved as to legal form and is within your authority to sign.

**Interlocal Cooperation Agreement
for
Completion of a Healthy Food Retail Initiative Evaluation
for Austin Public Health**

This Interlocal Cooperation Agreement for the completion of a qualitative and quantitative evaluation for Austin Public Health ("Agreement") is by and between the City of Austin, a home-rule municipal corporation ("City"), and The University of Texas Health Science Center at Houston ("UTHEALTH"), a state institute of higher education organized under the laws of the State of Texas and a member of The University of Texas System ("System"), together the "Parties," and each individually, a "Party."

Austin Public Health (APH), a department of City, promotes and protects a healthy community through the use of best practices and community partnerships. The mission of APH Chronic Disease and Injury Prevention Program (CDIP) is to inspire people to take steps to adopt healthy lifestyles through promoting and modeling healthy behaviors, preventing and managing chronic disease, and promoting policy, systems, and environmental change. CDIP brings together local coalitions, businesses, non-profits, schools, and community members to create lasting changes that make it easier for everyone to be healthier.

Austin City Council has allocated ongoing healthy food access funding in the APH general fund budget to improve access to healthy and affordable foods in areas that lack access and have high rates of chronic disease. Collectively, these programs are called *Fresh for Less*, and currently include the Healthy Corner Store Initiative, Farm Stands, Mobile Markets, and the Nutritious Food Incentive Program. More information about Fresh for Less can be found at freshforlessaustin.org. The purpose of this interlocal agreement is to conduct a qualitative and quantitative evaluation of the Fresh for Less programs.

- A. **Term.** The term of this Agreement shall be from February 1st, 2019, through December 31st, 2019 unless a Party elects to terminate the Agreement in accordance with Section I, Termination and Dispute Resolution. There are four 12-month renewal options, pending identified program needs and budget in future Fiscal Years.
- B. **Services.** UTHEALTH will provide a qualitative and quantitative evaluation of the Fresh for Less Projects. Performance measures, including the deliverables and activities, are presented in Exhibit A.
- C. **Financial Terms**
 - 1. City shall pay UTHEALTH for services rendered under this Agreement in an amount not to exceed forty-five thousand Dollars (\$45,000).
 - 2. The payment schedule for reimbursement is set forth in Exhibit A.
 - 3. UTHEALTH shall submit payment requests to the City's Contract Manager for review and approval within 15 calendar days following each deliverable deadline identified in Exhibit A. City shall pay UTHEALTH within 30 days of receipt of a complete and accurate invoice. Each invoice shall include copies of any and all materials deemed by the City, in its reasonable discretion, to support and verify the invoice.

4. UTHEALTH shall not submit, and the City shall not pay, any invoice that would cause the total amount paid by the City during any annual term of this Agreement to exceed \$45,000 (*Forty five thousand dollars*) annually.
5. The making and acceptance of final payment will constitute:
 1. a waiver of all claims by the City against UTHEALTH, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of UTHEALTH to comply with the Agreement or the terms of any warranty specified herein, regardless of when the cause for a claim is discovered (4) arising from UTHEALTH's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 2. a waiver of all claims by UTHEALTH against the City other than those previously asserted in writing and not yet settled.

D. Compliance with Laws. UTHEALTH agrees to comply with all applicable federal, state, and local laws and regulations in performing and providing services under this Agreement. UTHEALTH agrees not to discriminate against employees or other persons engaged by it to provide services under this Agreement because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or veteran status.

E. Designation of Contract Managers

1. City's Contract Manager for this Agreement is Ashley LeMaistre, Program Coordinator, Austin Public Health, P.O. Box 1088, Austin, Texas 78767, (512) 972-6464, who shall be responsible for oversight of this Agreement. City's Contract Manager may meet with UTHEALTH to discuss any operational issues or the status of the services or work to be performed. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. The Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract and shall participate regularly in conference calls or meetings for status reporting. The Contract Manager shall promptly review any written reports submitted by the Contractor and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
2. UTHEALTH's Contract Manager for this Agreement is Harold Flenoy, Senior Administrative Manager, 1616 Guadalupe Suite 6.300, Austin, Texas 78702. UTHEALTH's Contract Manager shall represent UTHEALTH with regard to the terms of this Agreement, on behalf of its Principal Investigator Dr. Alexandra van den Berg. Dr. van den Berg shall be the designated point of contact with regard to the performance of this Agreement and for the City Contract Manager.
3. If UTHEALTH replaces its Principal Investigator, UTHEALTH shall promptly send written notice of the change to the other Party. If City replaces its Contract Manager, City shall promptly send written notice of the change to UTHEALTH. The notice shall identify a qualified and competent replacement and provide contact information.

- F. **Right to Audit.** UTHEALTH agrees that the representatives of the Office of City Auditor, or other authorized representatives of City, shall have access to, and the right to audit, examine, or reproduce, any and all records of UTHEALTH related to the performance under this Agreement during normal business hours (Monday - Friday, 8 am - 5 pm, excluding UTHEALTH holidays). UTHEALTH shall retain all such records for a period of three years after the expiration or early termination of this Agreement or until all audit and litigation matters that City has brought to the attention of UTHEALTH are resolved, whichever is longer. UTHEALTH agrees to refund to City any overpayments disclosed by any such audit.
- G. **Warranties.** Each party certifies and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the Party.
- H. **Public Information Act.** The Parties acknowledge that each Party is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement and documents related to this Agreement that are in City's or UTHEALTH's possession or to which City or UTHEALTH has access are presumed to be public and City or UTHEALTH may release these records to the public after the other Party consents to the release unless a mandatory or discretionary exception described in the Public Information Act applies to a document.
- I. **Reporting Requirements.** The Contract Manager will promptly review any written reports submitted by the Contractor, and will review and process invoices for payment, as appropriate. The City's Contract Manager will give the Contractor timely feedback on the acceptability of progress and task reports.
- J. **Termination and Dispute Resolution**
1. **Termination for Cause.** In the event of a default by a Party, the other Party shall have the right to terminate this Agreement for cause, by written notice delivered by certified mail to the Party in default. Unless the Party giving notice specifies a different time period in the notice, the Agreement is terminated ten calendar days after the date of the notice. During this time period, the Party alleged to be in default may cure the default or provide evidence sufficient to prove to the other Party's reasonable satisfaction that the default does not exist or will be cured in a time satisfactory to the party alleging the default. In addition to any other remedy available at law or in equity, the Party not in default shall be entitled to recover all actual damages and direct costs incurred as a result of the other Party's default, reasonable court costs, and prejudgment and post-judgment interest at the maximum lawful rate, to the extent allowed by law. Each Party's rights and remedies under this Agreement are cumulative and are not exclusive of any other right or remedy provided by law.
 2. **Termination for Convenience.** Each Party may terminate this Agreement for convenience at any time upon providing at least 60 calendar days of written notice to the other Party. Upon termination, UTHEALTH shall immediately stop performance of services (unless the notice directs otherwise) and deliver all documents, programs, reports, and materials accumulated in performing this

Agreement (whether finished or in process) to City's Contract Manager within ten business days. City shall pay UTHEALTH for all reimbursable costs and obligations incurred up to the date of termination. However, in no event shall UTHEALTH be entitled to recover any funds for unperformed services.

3. **Default.** A Party shall be in default under this Agreement if the Party fails to fully, timely and faithfully perform any of its obligations under this Agreement or fails to provide adequate assurance of performance under subsection 4 below (Right to Assurance).
4. **Right to Assurance.** When a Party to this Agreement in good faith has reason to question the other Party's intent to perform, that Party may make a written demand on the other Party for assurance of the intent to perform. The Party who is asked for assurance shall have ten business days to provide notice of its assurance of intent to perform. If the Party fails to provide the assurance within the required time period, the demanding Party may treat this failure as an anticipatory repudiation of this Agreement.

K. Insurance.

UTHEALTH agrees to procure the required insurance coverages attached to this Agreement as Exhibit B and deliver evidence of such coverages to City. UTHEALTH shall require all Subcontractors of every tier providing services under this Agreement to have insurance meeting the same requirements in said Exhibit B.

L. Miscellaneous.

1. **Independent Contractors.** This Agreement shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the Parties. City and UTHEALTH are independent contractors. City will not be responsible for reporting or paying employment taxes or other similar levies for UTHEALTH either individually or collectively that may be required by the United States Internal Revenue Service or other State or Federal agencies. UTHEALTH agrees and understands that this Agreement does not grant to UTHEALTH or its employees any rights or privileges established for employees of City.
2. **Jurisdiction and Venue.** This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflict of laws principles that would apply the law of any other jurisdiction. Venue for any dispute arising out of or concerning this Agreement, either administrative or judicial, shall be proper in Austin, Travis County, Texas.
3. **Force Majeure.**
 - a. Each party to this Agreement may excuse the failure of the other Party to perform its obligations under this Agreement if that failure is caused by an event of Force Majeure. Force Majeure means acts and events not within the control of the Party, and which the Party could not use due diligence to avoid or prevent. Events of Force Majeure include acts of God, strikes, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Force Majeure does not include economic or market conditions that affect a Party's cost but not its ability to perform.

- b. The Party invoking Force Majeure shall give timely written notice to the other Party of the event by facsimile transmission, telephone, or electronic mail. The Party shall then promptly provide written notice of the Force Majeure in the manner required by this Agreement. The Party shall use due diligence to remedy the effects of Force Majeure as soon as reasonably possible. If a Party's performance is delayed by the event of Force Majeure, the Parties will mutually agree to extend the time for the completion of obligations by a period of time reasonably necessary to overcome the effect of the Force Majeure event.
4. **Offset of Indebtedness.** UTHEALTH acknowledges that City has provided notice of Article VIII, Section 1 of the Austin City Charter, which prohibits the payment of any money to any person who is in arrears to City for taxes, and of § 2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed to the City.
5. **Non-appropriation.** UTHEALTH acknowledges that City has provided notice that City's payment obligations to UTHEALTH are payable only from funds appropriated and currently available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. City shall provide UTHEALTH with prompt notice of failure of City to make an adequate appropriation or lack of current revenue for any fiscal year to pay the amounts due under this Agreement. In such event, UTHEALTH may immediately terminate this Agreement and the City shall be obligated to compensate UTHEALTH for services performed up through the date such notice is received by UTHEALTH.
6. **Assignment.** Neither Party may transfer any right or obligation under this Agreement without the prior written consent of the other Party.
7. **Non-Waiver.** In no event shall any the City's or UTHEALTH's act or failure to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by either Party of any breach of covenant or default that may then or subsequently be committed by the other Party. Neither shall such act or failure to act in any manner impair or prejudice any right, power, privilege, or remedy available to either Party to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of either Party may waive the effect of this provision.
8. **Publicity and Publication.** UTHEALTH may publish results of the services provided under this Agreement with APH's written consent and APH staff who assist in the development of the publication shall be included in authorship of the report. UTHEALTH shall notify the City and submit a draft of the manuscript to the City for comment or correction of any factually incorrect representation concerning the City at least 30 calendar days prior to submission for publication or oral presentation. City shall have the right to review, comment upon the publication and correct any factually incorrect representation about the City. City shall notify Contractor in writing within 30 calendar days of receipt of such draft whether such draft contains information deemed confidential or factually incorrect. Upon City's request, publication shall be delayed up to 60 calendar days to enable the City to secure adequate intellectual property protection or factually correct a representation of the City that would be affected by the proposed publication or oral presentation.

Any news release, sign, brochure, or other advertising medium including websites disseminating information prepared or distributed by or for the contractor shall recognize the City as a funding source and include a statement that indicates that the information presented does not officially represent the position of the City.

9. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights upon any other person or entity, including but not limited to any client or employee of UTHEALTH.

10. Suspension of Funding.

- a. If City makes a determination that UTHEALTH has failed to timely and properly perform its obligations, City may, without limiting any rights it may otherwise have, at its discretion, and upon three calendar days within such determination provide written notice to UTHEALTH, and withhold further payments to UTHEALTH. Such notice shall be given in accordance with subsection 11 below (Notices). The notice shall set forth the default or failure alleged and the action required for cure.
- b. The period of such suspension shall be of such duration as is appropriate to accomplish corrective action, but, in no event shall it exceed 60 calendar days. At the end of the suspension period, if City determines that the default or deficiency has been satisfied, UTHEALTH may be restored to full compliance status and paid all funds withheld during the suspension period.
- c. City shall have the right to suspend this Agreement without prior notice to UTHEALTH upon a reasonable belief of imminent or actual misuse or misappropriation of this Agreement's funds. The period of suspension under this clause shall be for a period of time appropriate and reasonably necessary to complete an investigation, but in no event shall exceed 60 days. Should City choose to exercise its rights under this clause, upon reaching a decision to suspend, notice will be forwarded immediately to UTHEALTH notifying it of the suspension and any subsequent investigation City will undertake.

11. **Liability.** To the extent allowed by Texas law and the Constitution of the State of Texas, the City and UTHEALTH agree that each party is responsible for its own proportionate share of any liability for its negligent acts or omissions.

12. **Notices.** All notices, demands, and requests required or permitted under this Agreement shall be in writing and may be given by; (a) hand delivery to the party to be notified; (b) deposit in the United States mail, registered or certified, with return receipt requested, postage prepaid, addressed to the party at the address set forth below; (c) overnight courier of general use in the business community of Austin, Texas; or (d) facsimile correspondence if a facsimile number is provided below and the sending party retains a machine generated confirmation sheet evidencing the time and date of the facsimile transmission. Notice given under this section shall be deemed delivered and effective on the earlier of actual receipt or three calendar days following deposit in accordance with the requirements of subsection (b) above, except for (d) above, which will provide the date and time of delivery. For purposes of notice, the addresses of the Parties are:

UTHEALTH

The University of Texas Health Science
Center at Houston
Sponsored Projects Administration

7000 Fannin, UCT 1006
Houston, Texas 77030

City

By hand delivery to:

Stephanie Hayden
Director, Austin Public Health
7201 Levander Loop, Building E
Austin, Texas 78702

If by Mail:
PO Box 1088
Austin, Texas 78767

With Copy to:
Ashley LeMaistre
Program Coordinator
Austin Public Health
15 Waller Street, 4th Floor
Austin, Texas 78702

13. Entire Agreement

This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties with regard to the subject matter of this Agreement. The Parties agree that any prior contract, assertion, statement, understanding, or other commitment prior to or contemporaneous with this Agreement, whether written or oral, shall have no force or effect whatsoever; nor shall any contract, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect unless signed by both Parties.

Signatures:

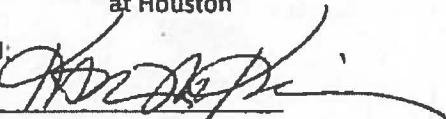
The University of Texas Health Science Center

City of Austin

at Houston

UTHEALTH:

Signature:



Kathleen Kreidler

Title: Associate Vice President, Sponsored Projects
Administration

Date: 2/22/2019

Signature:



Christopher Shorter

Title: Assistant City Manager

Date: 3/18/2019

Exhibit A:

Work Statement and Deliverables

1. Overview

The purpose of this contract is for UT Health Science Center (UTHEALTH) to continue to provide evaluation services including qualitative and quantitative analyses of the Fresh for Less projects. UTHEALTH has provided these services for the past 3 years. These evaluations will be used for the purposes of APH planning, and assessment of overall program effectiveness towards APH's goals of increasing access to and ultimately the purchase/consumption of healthy and affordable fruits, vegetables, and staple food items. Priority populations for these projects include individuals with greater risk factors for chronic disease (including low income individuals and individuals who are Hispanic/Latino and African American/Black), as well as individuals who live in geographic areas with less access to full-scale grocery stores and individuals who are eligible for and/or receive Supplemental Nutrition Assistance Program (SNAP).

The projects to be evaluated are the following:

- a. Mobile Markets
- b. Farm Stands
- c. Healthy Corner Store Initiative
- d. Nutritious Food Incentive Program

2. Deliverables

Farm Stands, Mobile Markets, and Healthy Corner Stores Evaluation			
Deliverable	Deadline	Supporting Documentation	Payment Amount
a. Refine sample size and timeline from previous years for survey collection of corner stores, mobile markets, and farm stands (# corner store, farm stand, and mobile market customer surveys to be collected, # store owner and market manager interviews to be conducted)	First 3 months	Sampling plan and timeline	\$1,500
b. Revise survey instruments for mobile markets, farm stands, and corner stores (intercept survey for healthy corner store initiative, intercept survey for farm stands, intercept survey for mobile markets).	First 3 months	Copies of final survey instruments for farm stands, mobile markets, and healthy corner store initiative	\$1,500

c. Analyze farm stand and mobile market data (sales, customers, SNAP and Double Dollars usage), provided by the City and/or contractors. Analyze corner store data if available. Write and submit draft of evaluation report for farm stands, mobile markets, and corner stores.	November 15, 2019	Draft evaluation report	\$15,000
d. Write and submit final evaluation report for farm stands, mobile markets and corner stores.	December 15, 2019	Final evaluation report	\$3,000
Nutritious Food Incentive Program (NFIP), Evaluation			
Deliverable	Deadline	Supporting Documentation	Payment Amount
e. Update and refine evaluation plan, including method for tracking participants- linking their incentive card number to their enrollment information and survey responses and timeline for evaluation.	Within first 2 months	Within first 2 months	\$1,500
f. Coordinate with Food Bank and partner organizations to update enrollment materials enrollment/intake forms and participant surveys for NFIP evaluation.	Within first 2 months	Final surveys and/or forms to be utilized in NFIP program evaluation	\$1,500
g. Analyze purchasing data provided by Wal-Mart and participant surveys and submit draft of NFIP evaluation report.	November 15, 2019	Draft NFIP evaluation report	\$18,000
h. Submit final NFIP evaluation report.	December 15, 2019	Final NFIP evaluation report	\$3,000

Exhibit B

Insurance:

The University of Texas Health Science Center at Houston (UTHEALTH) is part of the University of Texas System, and as an agency of the State of Texas is required to be:

- a. self-insured for all workers compensation, as defined by the Texas Labor Code. As such, the University provides coverage for its employees as stipulated under the Texas Labor Code, Title 5 Workers' Compensation, Chapter 503. The University's workers' compensation program is administered through a third party administrator and adheres to rules and regulations established by the Texas Division of Workers' Compensation.
- b. self-insured for all third party liability coverage. As such UTHEALTH, based on the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, has limited liability under the Act. Liability in cases of personal injury or death is limited to a maximum amount of \$250,000 per person and \$500,000 for each single occurrence. The maximum amount of liability for injury to or destruction of property is \$100,000 for each single occurrence.
- c. Automobile liability insurance for all owned, non-owned, and hired vehicles with limits of at least \$600,000 combined single limit.



THE UNIVERSITY OF TEXAS SYSTEM

Office of General Counsel

201 WEST SEVENTH STREET AUSTIN, TEXAS 78701-2981

TELEPHONE (512) 499-4462

FAX (512) 499-4523

Daniel H. Sharporn
Vice Chancellor and General Counsel

MEMORANDUM

TO: Whom It May Concern

FROM: Daniel H. Sharporn

DATE: December 19, 2014

SUBJECT: Insurance and Indemnification of The University of Texas System

The following information accurately summarizes the current state of affairs with respect to certain insurance and indemnification matters governing the academic and health institutions of The University of Texas System.

The University of Texas System is composed of 16 institutions (six exclusively health-related institutions, eight primarily academic institutions, and two academic institutions with medical schools) as well as UT System Administration. As an agency of the State of Texas, The University of Texas System is precluded from granting full indemnity in an agreement with another entity. This preclusion has two bases, the first of which is the Texas Constitution. Primarily, Article 3, Sections 50-52, of the Constitution generally provide that the State has no power to give, lend, or pledge the credit of the State to any person, association, or corporation.

The second basis for the preclusion is the doctrine of sovereign immunity, which, although abrogated in other states, continues to be the rule in Texas. A governmental unit, such as a University of Texas System institution, is immune from suit and liability unless the State (i.e. the Legislature) consents to the suit. *Dallas Area Rapid Transit v. Whitley*, 104 S.W. 3d 540, 542 (Tex. 2003). Legislative consent to suit, whether expressed

by statute or otherwise, must be given in clear and unambiguous language. *University of Texas Medical Branch v. York*, 871 S.W. 2d 175, 177 (Tex. 1994).

Employees of The University of Texas System are provided workers' compensation insurance coverage under a self-insured, self-managed program as authorized by the Texas Labor Code, Chapter 503.

The University of Texas System purchases automobile liability insurance for all University-owned, -hired and non-owned vehicles with limits of at least \$250,000 per person and \$500,000 per accident for bodily injury and \$100,000 for property damage. As discussed below, these damage limits are set by statute. The University of Texas System retains the right to self-insure automobile liability in the future if it is deemed to be in its best interest.

Because of the doctrine of sovereign immunity, The University of Texas System, an agency of the State of Texas, does not purchase general liability or employer's liability insurance for alleged torts committed by its employees who act within the scope of their employment, except in limited circumstances. However, the Texas Tort Claims Act ("the Act"), Chapter 101 of the Texas Civil Practice and Remedies Code, does provide a limited waiver of sovereign immunity for claimants who make tort claims under its provisions. These claims fall into two general areas: (i) injuries arising out of use of publicly owned motor vehicles and motor-driven equipment and (ii) injuries arising out of conditions or use of property.

The University of Texas System's liability under the Act is limited. Under the Act, liability in cases of personal injuries or death is limited to a maximum amount of \$250,000 per person and \$500,000 for each single occurrence. The maximum amount of liability for injury to or destruction of property is \$100,000 for each single occurrence.

This memorandum is intended only for use by The University of Texas System institutions and UT System Administration and their intended recipients. Subject to applicable law, this memorandum may not otherwise be disclosed by the recipient to third parties without the prior consent of the Office of General Counsel of The University of Texas System. This memorandum may be relied on as accurate only as of the date it is issued. The University of Texas System assumes no obligations to update this information and the recipient acknowledges that this information may be subsequently rendered inaccurate by statutory changes and other matters beyond the control of The University of Texas System.